



Constituting the occupation: preventive detention and permanent emergency in Kashmir

Haley Duschinski & Shrimoyee Nandini Ghosh

To cite this article: Haley Duschinski & Shrimoyee Nandini Ghosh (2017): Constituting the occupation: preventive detention and permanent emergency in Kashmir, The Journal of Legal Pluralism and Unofficial Law, DOI: [10.1080/07329113.2017.1347850](https://doi.org/10.1080/07329113.2017.1347850)

To link to this article: <http://dx.doi.org/10.1080/07329113.2017.1347850>



Published online: 27 Jul 2017.



Submit your article to this journal [↗](#)



Article views: 71



View related articles [↗](#)



View Crossmark data [↗](#)



Constituting the occupation: preventive detention and permanent emergency in Kashmir

Haley Duschinski^a and Shrimoyee Nandini Ghosh^b

^aDepartment of Sociology and Anthropology, Center for Law, Justice & Culture, Ohio University, Athens, OH, USA; ^bJammu Kashmir Coalition of Civil Society, Srinagar, India

ABSTRACT

This article analyzes Indian occupation of Kashmir as a legal, social, and spatial process of asserting power through borders and jurisdictional claims, produced and reproduced through constitutional processes and legal institutions that have enacted generalized notions of emergency and crisis. We argue that the distinctive socio-spatial power structures established between India and Kashmir in a provisional capacity amidst war and partition at the time of independence have been legitimized through rights regimes established through the constitutional structure and institutionalized through laws, executive orders, and the judicial system. We examine how India's legal incorporation of Kashmir was embedded in the constitutional drafting process and the extension of fundamental rights to the region through presidential orders, and how this legal incorporation became sedimented through the work of the courts across time. Building on Ranabir Samaddar's discussion of "colonial constitutionalism," we consider "occupational constitutionalism" as a form of foreign dominance and control produced through the annexation of part of Kashmir's territory and its legal sovereignty to India in the aftermath of independence and reproduced through a series of legal mechanisms and processes across time that institute a state of emergency and permanent crisis in Kashmir.

ARTICLE HISTORY

Received 4 May 2017
Accepted 25 June 2017

KEYWORDS

Occupation; emergency; law; sovereignty; Kashmir

Introduction

In September 2016, Indian state forces launched Operation Calm Down in Kashmir Valley, part of the contested Indian state of Jammu and Kashmir (J&K) that has been the center of the Kashmiri freedom movement for independence from Indian rule for decades. Popular street protests involving chanting and stone pelting had escalated since the state's killing of pro-freedom militant leader Burhan Wani, the previous July. Army and police had instituted a state of siege in the region by declaring 24-hour curfews, shutting down communications, and using extreme and lethal force, including live ammunition and 12-gauge shotguns, against funeral processions, public gatherings, and street protests, leading to the deaths of over 100 civilians and the blinding of hundreds more. Through Operation Calm Down, the Indian counter-insurgency apparatus in September

attempted to control the 2016 uprising not only through the overt application of armed force against crowds and protestors but also through administrative, policing, and profiling techniques such as nocturnal raids, mass arrests, and widespread preventive detention against street protesters as well as individuals whom the Indian Home Minister referred to as the “instigators and motivators” of protests: community organizers, political leaders, civil rights activists, and trade unionists. The crisis came to international attention with India’s controversial preventive detention of Khurram Parvez, an internationally recognized Kashmiri human rights activist detained on his way to attend the United Nations Human Rights Council Session in Geneva on September 15 and held for 76 days.¹

After the announcement of Operation Calm Down, civilian deaths declined throughout the autumn, prompting Indian newspapers to announce a return to normalcy in Kashmir. Established across decades of conflict, the media frame of “return to normalcy” characterizes politics in the region as a cyclical rise and fall of mass uprising and state repression in Kashmir Valley, and a recurring escalation and de-escalation of cross-border armed hostilities and diplomatic tensions between India and Pakistan. This narrative has become especially dominant since the beginning of the current phase of the resistance movement in 2008, and it is aligned with India’s longstanding military–political strategy for managing Kashmir, which has produced what Paul Staniland (2013, 932) calls a “paradox of normalcy” wherein “electoral competition is encouraged, but local politics is carefully controlled and manipulated; the rule of law is hailed, but state accountability is extremely weak; and generally non-violent mass mobilization is met with heavy-handed security forces.” The frame of cycles of violence and normalcy strategically obscures the consistent nature of India’s counter-insurgency policy that plays out both through spectacular forms of direct state violence and also through the routinized and institutionalized use of civil and bureaucratic authority, the revolving-door prison system, and the legal and extra-legal measures for coercive control over a dissenting population marked as the enemy within. In this article, we argue that India’s occupation of Kashmir is based on a normalized and pervasive logic of punitive containment of Kashmiri dissent and rebellion that produces and is produced by a jurisdiction of suspicion with its origins in colonial power relations, entrenched in the constitutional foundations of the postcolonial Indian state.

The international humanitarian law regime has traditionally defined occupation as the temporary, effective control of a sovereign territory by a foreign power and its armed forces, typically established through a war. More contemporary legal scholarship has highlighted the inadequacies of applying this nineteenth-century understanding of force, statehood, and sovereignty to twenty-first-century legal and political realities. International law scholar Eyal Benvenisti offers a contemporary definition of occupation as “a situation where the forces of one or more states - including peacekeeping forces or forces of international organisations – exercise effective control over a territory of another state without the sovereign’s volition” (2016, 435). Despite powerful claims for the applicability of occupation law to India’s political and legal relationship to Kashmir, the international community has largely declined to apply the legal frameworks and cultural vocabularies of occupation to the Kashmir case. Those supporting the movement for self-determination in J&K argue that India’s administration of Kashmir was negotiated as a provisional arrangement between two sovereign entities (India and Kashmir) at a time of war accompanying decolonization in South Asia, and further, that India’s subsequent legal, political,

and military maneuverings have entrenched a system of coercion and domination that Kashmiris have never accepted and that violates the laws of occupation. Those opposing the movement for self-determination argue (in alignment with the position of the Indian state) that Kashmir is an integral part of India; that international humanitarian law, and specifically occupation laws, do not apply to this internal conflict; and that Kashmir's independence and/or reunification across the Line of Control (LoC) would constitute a threat to the territorial integrity of the Indian state and a victory for India's political opponent, Pakistan.

This article provides an analytical framework, informed by the authors' empirical research on issues of law and conflict in Kashmir, for understanding the nature of Indian occupation of J&K. It thus contributes, not only to the innovative body of socio-legal scholarship on law, power, and occupation represented by this special issue, but also to the emerging body of Critical Kashmir Studies scholarship that approaches the Indian state's relationship with J&K as a military occupation in the context of an armed conflict between an armed resistance movement and the Indian state (Duschinski et al. [forthcoming](#)). In recent years, Kashmir researchers have analyzed the everyday brutal realities of India's occupation in Kashmir, with attention to themes of impunity and militarization (Duschinski 2009; Mathur 2016), gendered experiences of state violence (Batool et al. 2015; Ghosh 2014; Mathur 2012; Zia 2016), military humanitarianism (Bhan 2014; Varma 2012, 2016), legal institutions and mobilizations (Duschinski and Hoffman 2011), and memory and resistance (Junaid 2013). This scholarship aligns with a generative moment of Kashmiri artistic and cultural production that articulates Kashmiri aspirations for freedom from Indian occupation through new discursive expressions of political identity and new performative practices of political protest.² As Bhan, Duschinski, and Zia argue, "This practice of naming the brutal modalities of power in Kashmir as occupation is a political and moral choice, a commitment to exposing the Indian performance of democracy, human rights, and citizenship that has continually undermined the basic rights and freedoms of Kashmiris" (Mona, Duschinski, and Zia [forthcoming](#)).

Current contestations over the territorial and political status of J&K can be traced to the politics of borders, territories, and identities in the colonial and immediate postcolonial periods on the South Asian subcontinent. In 1846, the Government of British India signed a treaty with Sikh chieftains from the Punjab transferring the lands of three Himalayan provinces – Jammu, Kashmir, and Ladakh – to Dogra dynasty rulers to be ruled under British paramountcy as the independent princely state of J&K. Kashmiri political mobilizations under Dogra rule in the 1920s and 1930s led to a series of constitutional reforms, including the recognition of special land and employment rights of state subjects and the enactment of the Jammu and Kashmir Constitution Act of 1939 establishing the state's first legislative assembly, the Praja Sabha, partly elected and partly nominated, with a majority of members nominated by the monarch: a Council of Ministers appointed by the monarch and headed by a Prime Minister; and an independent judiciary. The princely state of J&K maintained its sovereign status as an independent monarchy through the subcontinent's independence and the institution of India and Pakistan in August 1947 until these two sovereign nations officially went to war over the region in May 1948, resulting in a UN-mandated ceasefire line known today as the LoC dividing the territory into two regions in 1949: the Indian-controlled State of Jammu and Kashmir, and the Pakistan-controlled administrative region of Azad Jammu and Kashmir. Contemporary

Kashmiri political identity thus emerged in a “context of regional and international concern for (and dispute over) a Jammu-and-Kashmir that is both a former and a not-yet or a never-to-be political entity” (Robinson 2013, 32; for more on authority, sovereignty, and legitimacy during the Dogra period, see Rai 2004; Zutshi 2004).

In the decade following independence and partition, India’s governance over J&K was legitimized through parallel constitutional drafting processes in India and J&K that incorporated J&K into the Indian constitutional framework with special status, a form of sovereignty that has gradually eroded across the twentieth century (Noorani 2011; see also Bose 2003, 70). J&K was the only state within the Indian federation that negotiated the terms of its temporary entry into the Indian union through a constitutional assembly process. The special constitutional relationship was established through Article 370 of the Indian constitution, which limits Indian jurisdiction over the laws of J&K except in the realms of foreign affairs, defense, and communications, and protects proto-citizenship rights to property by ensuring that only state subjects with proof of permanent residency status can own land in the state. Written into the Indian Constitution during the India–Pakistan war and pending the UN resolution on the region, Article 370 was designed to temporarily manage the constitutional relationship between J&K and India until the political will of the people could be established and a final settlement reached through the state’s own constitutional drafting process. As political scientist Louise Tillin (2006) points out, scholars often problematically celebrate the current arrangement as a form of “asymmetric federalism” through which J&K enjoys a differentiated form of legal autonomy due to its distinctive social, cultural, and religious characteristics, but is nonetheless integrated completely within India’s jurisdiction and territory. Tillin argues that this misapprehension fails to account for the reasons for the introduction of special status as a temporary measure in the first place and also neglects the extent to which J&K’s special constitutional sovereignty has been extensively revised through presidential orders across time. Following Khosla (2002, 75), Tillin argues that the form of federalism negotiated through Article 370 has emerged as “asymmetric in the opposite sense to that intended,” since it has given the Indian union greater powers over J&K than it has over other states (Tillin 2016, 543).

The Kashmiri freedom movement has sustained in various forms across the late colonial and postcolonial periods to the present. The legal foundations of contemporary claims for self-determination are a series of UN Security Council resolutions addressing the need for a plebiscite to determine the region’s political future. These resolutions were initially passed in 1948 when parts of the former princely state were under military control of India and Pakistan, and then reiterated through subsequent resolutions adopted by the newly created UN Commission for India and Pakistan in 1948 and 1949 as well as by the Security Council until 1957.³ These resolutions, which aimed to establish a mechanism for a plebiscite to determine the status of the divided territory, register the UN’s commitments to bringing about a mediated settlement by ascertaining the collective will of Kashmiri people – a collective will expressed through a mass popular movement for *azaadi*, first from autocratic Dogra rule during the colonial period, and then from Indian rule.

While both India and Pakistan have permanently deployed significant numbers of armed forces in the region since the mid-twentieth century, particularly along the disputed LoC, India’s militarization of J&K dramatically intensified in the 1990s with the rise of the armed freedom struggle. More than 25 years after the outbreak of the armed rebellion, an estimated 700,000 Indian state forces continue to occupy vast tracts of land and

civilian infrastructure in J&K (IPTK and APDP 2015). The majority of these armed forces are deployed on military operations targeting civilian populations in villages, towns, and cities, rather than engaging with Pakistani troops in the border regions (Ghosh 2016). Extraordinary laws such as the J&K Disturbed Areas Act and the Armed Forces Special Powers Act have been in place since 1990. These laws designate J&K a disturbed area, allow the use of lethal force by military and police personnel, and grant military personnel immunity from prosecutions for crimes committed during military and police operations, thereby bolstering a climate of judicial, moral, and political impunity for gross and large-scale human rights violations including civilian massacres, enforced disappearances, extra-judicial killings, torture, and sexual violence.

India often justifies its extreme state violence in the 1990s as a necessary reaction to an illegitimate and Pakistan-supported militant movement for self-determination. The Indian statist position, broadly consistent across successive administrations since independence, is that Pakistan invaded the princely state in October 1947, prompting the Dogra maharaja's execution of the Instrument of Accession to India, and that this accession cemented J&K's status as a federated state in the Indian union as unconditional and final. India maintains that Kashmir's gradual yet firm incorporation into the Indian constitutional framework over time, as well as Kashmiri participation in federal and state elections across decades, obviates the need for a plebiscite and represents the political desire of the Kashmiri people to be part of Indian union.

India's refusal to recognize the Kashmiri struggle for self-determination through the logic of occupation is perhaps not surprising. Legal scholar Eyal Benvenisti notes that in contemporary contexts, occupying states generally deny or obscure the true nature of their control of foreign territory and do not acknowledge their status and duties under the law of occupation (Benvenisti 2013; see also ICRC 2012). For this reason, he urges analysts to move away from the early twentieth-century practice of defining occupation in terms of the historical process through which a territory came under foreign control, and toward "a more encompassing definition of occupation" that considers "the phenomenon of occupation... defined as the effective control of a power... over a territory to which that power has no sovereign title, without the volition of the sovereign of that territory" (Benvenisti 2013, 3).

In this article, we analyze how India has established and maintained its "effective control" over J&K through constitutional processes and legal institutions that enact generalized notions of emergency and crisis. Following legal sociologist Lisa Hajjar's argument that "military occupation is a distinctly illiberal type of political arrangement, combining elements of colonialism (foreign rule) and a state of emergency (martial law)" (2005, 4), we analyze Kashmir's relationship to India as one of *occupational constitutionalism* – a form of foreign dominance and control produced through the annexation of part of Kashmir's territory and its legal sovereignty to India in the aftermath of independence and reproduced through a series of legal mechanisms and processes across time that institute a state of emergency and permanent crisis in Kashmir. We specifically argue that the distinctive socio-spatial power structures established in a provisional capacity amidst war and partition at the time of independence have been legitimized through rights regimes established through the constitutional structure and institutionalized through laws, executive orders, and the judicial system. We see preventive detention as a particular

instantiation of such legal processes that put in place a regime of punitive containment in which the “conflict is the emergency” (Hajjar 2005, 4).

The article begins with discussion of the centrality of preventive detention legislation in the constellations of rights, liberties, and power that constituted the colonial and early postcolonial legal systems of India and Kashmir. Following Hussain (2003, 32), we argue that “general notions of emergency, quite apart from specific occasions that call for extraordinary powers, are imbricated into the legal reasoning and legal institutions of the colonial state,” with implications for the possibilities of sovereignty in Kashmir. We then consider the special constitutional relationship established between the former princely state and the new Indian state at the time of independence and incorporated into the Indian constitution through Article 370. This section highlights the ways in which generalized notions of danger and threat associated with Kashmir justified the use of executive power to transform Article 370 from a constitutional framework of sovereignty and self-determination to a constitutional mechanism of incorporation in the Indian union. The next section considers the way in which this legal incorporation became institutionalized through the work of the courts across time. Throughout the analysis, we consider the Indian occupation of Kashmir as a legal, social, and spatial process of asserting power through borders and jurisdictions, justified through the logic of generalized emergency and perpetual crisis.

Preventive detention in Kashmir

Preventive detention legislations are a continuous thread running through the colonial and postcolonial constitutional history in Kashmir. The legal classification of the J&K state subject developed in the early nineteenth century as a critical component of the formation of an independent Kashmiri political identity, facilitating the development of legal mechanisms to exclude foreigners, contain political opponents, and curb antimonarchical ideas considered subversive and threatening to the political regime of the Dogra state (Robinson 2013, 38). J&K’s colonial legal system featured various forms of criminal sanctions against political, social, and Muslim religious mobilizations, speeches, and processions, as well as bans on the distribution of anti-Dogra publications (Rai 2004, 181, 227). Passed immediately following the launch of the popular Quit Kashmir movement against the Dogra maharaja, the J&K Public Security Act 1946 was the first in a series of legislations allowing for preventive detention and other far-reaching restrictions on public political activity on grounds of public order. It provided for indefinite preventive detention, proscription of newspapers, and bans on strikes, public gatherings, social boycotts of government functionaries, false rumors, and mock funerals “in the interest of the security of the State, public order and general public.” The postcolonial J&K state legislature replaced the Public Security Act 1946 with the Preventive Detention Act (PDA) 1954, designed to apply for five years and then expire automatically, and then repeatedly replaced months before its expiration through the Preventive Detention Amendment Act 1958, the PDA 1964, and the Preventive Detention (Amendment) Act 1967.

Addressing the role of preventive detention across these decades, political scientist Sumantra Bose describes the constitutional agreement between J&K and India as a “strategy of hegemonic control [which] could be sustained only by turning Indian-controlled Kashmir into a draconian police state in which civil rights and political liberties were

virtually nonexistent” (2007, 171). Detailing many instances of preventive detention in J&K between 1950 and 1977, Bose describes how preventive detention law was used to punitively contain powerful opposition figures and stifle democratic dissent, even when it occurred within the official electoral process that ostensibly represented popular sovereignty. Citing a contemporaneous account of the 1972 elections, he writes:

When in 1955 Abdullah’s followers formed an organization called the Plebiscite Front – which stood for self-determination through plebiscite under UN auspices, withdrawal of the armed forces of both nations from Kashmir, and restoration of civil liberties and free elections – the government of Indian controlled Kashmir prohibited the organization’s public meetings and arrested its leaders...When the Plebiscite Front, in a change of strategy in late 1970, announced its intention to contest elections to Indian controlled Kashmir’s legislature, due in 1972, “at least 350 officials and members of the Front were arrested under the Preventive Detention Act [of Indian-controlled Kashmir] in a series of police raids” and the organization was declared illegal under India’s Unlawful Activities Prevention Act on the grounds that the Front had on diverse occasions by words either spoken or written, and signs and visual representations asserted a claim to determine whether or not Kashmir shall remain a part of India. (Bose 2007, 173; citing Akhtar 2000)

The most recent iteration of preventive detention law, the Public Safety Act (PSA) 1978, has been widely used as a central legal and political weapon of India’s counter-insurgency operations in the state (Amnesty International 2011). The PSA allows for the administrative detention of individuals for up to two years in the regular prison system without charge or trial through executive detention orders issued by administrative officials. Administrative detention applies to individuals suspected of involvement in activities that threaten the maintenance of order or national security, and the detention orders are commonly based on information dossiers provided by police with input from intelligence agencies. Preventive detention in J&K forms a routinized means of targeting those who support the cause of Kashmiri independence and who challenge the legitimacy of the Indian state in J&K including street protesters, former militants, political leaders, lawyers, journalists, and, as in the case of Khurram Parvez, human rights activists. The state’s strategic use of preventive detention intensifies during times of political upheaval and public protest, with police and paramilitary forces launching concerted operations of cordons and searches, mass arrests, and night raids targeting neighborhoods perceived as particularly restive or volatile. The state’s use of arbitrary and indiscriminate preventive detention reached new heights during the prolonged cycle of violence and human rights abuses in 2016, with the Jammu and Kashmir Coalition of Civil Society reporting more than 8000 civilians under illegal detention including 582 civilians detained under PSA (JKCCS 2017).

The state’s deployment of PSA in Kashmir exceeds its legal limits, as demonstrated through the common practice of revolving-door detentions in which individuals are detained, released on paper but held illegally without charges, and then immediately detained again under a new detention order under PSA. This system is perpetuated through the common police practice of writing open-ended complaints, called “open” First Information Reports (FIRs), against unnamed suspects participating in a crowd accused of violent and riotous acts causing injuries to police personnel or damage to property. These open FIRs create a wide legal dragnet charging any person detained under PSA with involvement in activities that threaten public order. In such cases, the police cite numerous prior open FIR complaints in the police dossier that forms the basis of the

detention order, without subjecting these open complaints to the ordinary criminal law requirements of investigation, indictment, trial, or conviction. Thus PSA is used to detain people for long periods of time on the basis of intelligence and police materials that are often not disclosed to detainees, without charging or prosecuting the detainees through the courts with a recognized criminal offense. Through the legal and illegal applications of this “lawless law” (Amnesty International 2011), PSA establishes a broad jurisdiction of suspicion, with punitive containment operating as a powerful political weapon in the militarized policing and administrative apparatus of Indian rule in Kashmir.

Colonial constitutionalism and preventive detention

“The relationship between terror and law,” writes Ranabir Samaddar, “is not a question of relating violence just to law, but to the very process of constitution making” (Samaddar 2006, 18). In India, the normalization and internalization of emergency conditions and laws, including preventive detention, are embedded in the legal regimes of the colonial and immediate postcolonial period (see Hussain 2003; Kaul 2011). As Samaddar has argued, “colonial legality never came to terms with what can be called actions in the public space symbolizing opposition to the law” (Samaddar 2006, 31). Amidst prevailing conditions of eighteenth-century wars, mutinies, and revolts, the logic of colonial sovereignty ensured the colonial state’s establishment of authority over the people through a constitutionally sanctioned distinction between those who did and did not have rights, justified through the introduction of a legal definition and juridical invocation of terror (see Samaddar 2006, 30). At the time of Independence, this dual strategy of inclusion and exclusion became written into the constitution, producing a distinction between the sovereign people as a political community with rights including the right to life, and those excluded from the public as a class without rights. This moment of what Samaddar calls “colonial constitutionalism” established the political fact of association with violence as one of the disqualifications of citizenship – a disqualification that has continued to be reproduced through rights regimes centered upon preventive detention as “a law enforcement tool rather than as an extraordinary measure to be applied only during an emergency or during national crises” (Noorani 2012, 2).

In postcolonial India, preventive detention – a legal and political tool that applies the logic of punishment as a method of pre-emptively controlling political and economic dangers to India’s national sovereignty – has been a central component of governance. The Indian constitution allows central and state parliaments to enact preventive detention laws that allow for the detention of individuals for issues relating to “the security of a State, maintenance of public order, or maintenance of supplies and services essential to the community.” These administrative detentions proceed without proof of criminal offence or formulation of charges. The Indian Parliament passed the first national preventive detention legislation, the PDA, in 1950, just one day after the courts struck down colonial-era preventive detention legislation. Since that time, federal preventive detention laws have been in place more or less continuously at central and state levels.⁴ The persistence of preventive detention across time has led to the normalization, stabilization, and standardization of what Upendra Baxi calls a preventive detention system that runs parallel to the criminal justice system (Baxi 1982, 30; see also Singh 2009). As legal scholar Halie Ludsin argues in her examination of India’s preventive detention legislation, “once the

government is able to justify preventive detention, it is almost impossible to imagine governing without it" (Ludsin 2016, 96).

Coming into force in January 1950, the Indian Constitution was written in the immediate aftermath of the tumultuous partition of the subcontinent in 1947. The constituent assembly debates across 1948–1950 reveal the extent to which this upheaval and instability-shaped decision-making on questions of personal liberty, due process, and the establishment of a preventive detention regime, leading constitutional historian Granville Austin to claim that “the story of due process and liberty in the constituent assembly was the story of preventive detention” (Austin 1966, 102; see also Jinks 2001; Mate 2010; Noorani 2012). Debates over the language of the constitution’s fundamental rights chapter in relation to preventive detention focused on whether to use the phrase “due process” or “procedure established by law” for the life and liberty clause (Article 21)– revealing a concern with how much judicial review over administrative processes should be permitted to safeguard personal liberty. The assembly’s ultimate decision to use the phrase “procedure established by law” signaled the intention of the framers to limit the court’s power to intervene in central government policy-making and to enforce limits on government power, especially with reference to preventive detention (Mate 2010). The consequences, as Noorani, notes, were “largely as envisioned by members of the Assembly: the power of the judiciary to question the validity of a law by reference to the principles of ‘due process’ was severely diminished” (Noorani 2012, 7–8).

These debates over preventive detention significantly shaped the outcome of chapter of fundamental rights, embodied in Part III of the Indian Constitution. Article 21 outlines the protection of life and liberty, specifying that deprivations may only occur “according to procedures established by law” rather than due process, while Articles 22 (1) and (2) outline the procedural protections for detainees, including being informed of the reasons for the arrest, having access to a legal practitioner, and the notification of a magistrate within 24 hours of detention. Article 22 (3) then specifies that Clauses (1) and (2) do not apply to persons arrested or detained under preventive detention laws, while Clauses (4) through (7) specify preventive detention procedures. Thus Article 22 on preventive detention was devised as a means to justify the exclusion of a due process clause in Article 21 (Jinks 2001; Mate 2010).

The peculiar process through which preventive detention was included in the chapter on fundamental rights of the Indian constitution has meant that ordinary constitutional rights relating to criminal justice – for instance, the right to be informed of grounds of detention, to make representations against such orders, to consult legal counsel, and to be produced before a magistrate within 24 hours of the detention – are not applicable to administrative detainees. There is also no possibility of bail, as in the ordinary criminal process. The detainee’s only available remedy to secure release before the expiration of the term of the detention order is a post-detention *habeas corpus* writ petition filed before a constitutional court, such as the High Courts of states and union territories and the Supreme Court of India, to set aside an illegal detention order on constitutional grounds. Petitioners must assert that the minimal safeguards of the preventive detention law, which conform to the constitutional safeguards established in Articles 22 (4) through (7), have been violated, or that the detention order is otherwise bad in constitutional law as established through case law in the jurisdiction. Courts do not consider substantive questions of the “subjective satisfaction” of the detaining authority, the validity or even the existence

of evidence of wrongdoing, or standards of proof.⁵ In doing so, they have minimized the punitive aspects of the law, seeing preventive detention orders as any other kind of purely administrative order, where the detaining authorities must simply apply their minds to the materials before them and be subjectively satisfied that sufficient material exists to warrant a detention on national security or public order grounds, with the knowledge that writ courts will not investigate the truth or quality of such materials (*Haradhan Saha and Another vs. State of West Bengal and Others* 1975 (SCR (1) 778)).

India's constituent assembly debates over the inclusion of a preventive detention clause in the chapter of fundamental rights demonstrate "how the terms of the colonial state were utilized now to ensure the success of 'the people's will'" (Hussain 2003, 139). The transition from colonial subjugation to Indian independence was structured by an interim arrangement that ensured the central place of the jurisdiction of suspicion within Indian constitutionalism. The parliamentary debates over the PDA in the early 1950s demonstrate the arguments in support of and in opposition to preventive detention (see Ludsin 2016, 96–105). Supporters articulated the need for the act through reference to "antina-tional" and "antisocial" elements posing a threat to public order, suggesting that "civil liberties belong only to the law abiding" (Ludsin 2016, 100), while opponents emphasized the importance of protecting civil liberties, questioned the existence of an actual emergency, and argued "that the government was employing preventive detention to curtail civil liberties and silence opposition, rather than to prevent violence" (Ludsin 2016, 100–102). For example, one parliamentarian raised concerns about the "apparatus of suspicion" associated with preventive detention:

The *raison-d'être* of preventive detention is that it is preventive in nature and that materials on which the action is taken admittedly fall short of proof and are merely grounds of suspicion... [T]his apparatus of suspicion is built up either on the report of a police spy or on the report of agent provocateurs or on the report of so many other busy bodies who might be taking a prominent and not altogether healthy interest in the victim. (Krishnaswami 1952, quoted in Ludsin 2016, 103)

Such forms of intelligence gathering were, in fact, a critical component of the legal definition and juridical invocation of terrorism in the process of constitution building. "Intelligence," writes Samaddar (2006, 23), "was a grey area in state operation, little controlled by law and norms of accountability; and terror had become 'democratic,' with the means of violence within reach of many, hate becoming widespread and opposition to rule deep – all these requiring the State to gather greater and greater information about 'irresponsible opposition'."

Legitimized through an apparatus of suspicion and sustained by intelligence gathering, preventive detention thus emerged as a constitutional cornerstone of governance and rule of law in postcolonial India. In the next section, we describe how this logic of permanent exception and differential citizenship became mapped across the territory through the negotiation and establishment of a special constitutional relationship between India and Kashmir.

Constituting the permanent crisis

The J&K constitutional settlement process marks a moment of constitutive violence and occupation in Kashmir. In this section, we describe how the constituent assembly of India

initially granted popular democratic authority to the constituent assembly of J&K under Article 370 to draft the J&K constitution with full sovereignty over all matters, including deciding the future of the monarchy and the state's constitutional relationship with India, on the basis of the principle of self-determination. Once the J&K constituent assembly was effectively brought under Indian control in the early 1950s, India legally annexed and integrated the territory through a series of executive presidential orders, buttressed by intelligence operations and physical force. The coercive constitutional relationship was made possible by the sense of permanent political danger and instability associated with the border state. Occupational constitutionalism, we argue, operated through a dual process of establishing India's authoritarian rule while undermining J&K's sovereign status.

During the final years of Dogra rule, the maharaja exercised his sovereignty in accordance with the constitutional principles and conventions outlined in the Jammu and Kashmir Constitution Act 1939, a constitutional text older than the Indian constitution which persisted through two decades of intense collective action and political changes until the J&K constitution came into force in 1957. This period was marked by the Kashmiri armed rebellion in the western parts of the princely state, which would become Azad Kashmir; a war launched from the regions of Pakistan along the state's northern and northwestern frontiers supporting the indigenous rebellion against the Dogra ruler; large-scale migrations, particularly in the Jammu regions; United Nations deliberations on the mechanisms for a ceasefire, a joint cross-border interim administration, and a plebiscite-based solution to the dispute; and the severe repression of prominent strands of pro-Pakistan political support in Kashmir (Snedden 2013; Robinson 2013). Sheikh Abdullah, the popular Kashmiri leader of the anti-monarchal and anti-colonial Quit Kashmir movement against the autocratic Dogra rule, emerged as the key political figure of this time. As founder of the All J&K Muslim Conference party in 1932, which split and changed its name to the National Conference party in 1939, Abdullah was imprisoned on charges of sedition for his leadership of the Quit Kashmir movement in the months preceding Indian independence from May 1946 to September 1947.

In October 1947, the maharaja executed the Instrument of Accession accepting the authority of the offices and institutions established by the Government of India Act of 1935 but preserving the sovereign jurisdiction of J&K:

Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.⁶

Shortly afterwards, he issued a proclamation establishing an emergency administration lasting from October 1947 until March 1948. This emergency administration constituted a dual system of governance with two key figures: a Prime Minister with wide powers including power over the army and relations with foreign powers including the dominions of India and Pakistan; and a Chief Emergency Administrator responsible for internal security and administration. Acting with the support of Mahatma Gandhi and Prime Minister Jawaharlal Nehru, the maharaja named Sheikh Abdullah as Chief Emergency Administrator. The emergency administration also included members close to India's intelligence establishment, especially D.P. Dhar and Bakshi Ghulam Mohammad as the officers in charge of internal security. In March 1948, the maharaja dissolved the

increasingly fractious emergency administration, instituted an interim government, and appointed Sheikh Abdullah as Prime Minister.

As Prime Minister, Abdullah approached the establishment of the interim government on the Indian side of J&K as an act transferring sovereign power to the people of the entire territory of the original princely state. This approach did not acknowledge the internal rebellion in the western areas of the undivided state, the partition of the state, and the independence declared by the new Azad Kashmir provisional government, a body supported by Pakistan and recognized by the United Nations as a parallel local authority in the dispute. Although Abdullah's speeches featured frequent references to war, sabotage, conspiracy, and infiltration, they did not specify the actual nature of political arrangements existing throughout the territory or proposed by the United Nations. In his speech to the United Nations in 1948, Abdullah adopted the Indian narrative of external aggression through "raiders" and "marauders," emphasizing Pakistan's lack of legitimacy in acting as a liberator of the people. Pakistan's call for plebiscite after mounting a violent and brutal invasion, he said, was in bad faith: the Kashmiri demand for "freedom before accession" had been preempted by Pakistan's efforts "to force this position of slavery upon us" (Abdullah 1948). As leader of the National Conference political party, Sheikh Abdullah viewed the Muslim League and the Muslim Conference – powerful pro-Pakistan lobbies with popular support, particularly among the returning refugee populations in Indian-held territory – as enemies within.

The interim government dealt with this persistently divided political identity through constant surveillance and intelligence operations, political repression, policing, torture, and exile. It became notorious for its authoritarian tactics, including widespread use of arbitrary arrests, informers, and intelligence officers; intolerance of public and even private expressions of pro-Pakistan sentiments, such as listening to Radio Pakistan; and criminalization of dissent or critique of the political dispensation – all framed by the Indian army's border maneuvers to push back refugees, marked as infiltrators, returning from the violence of war and partition.⁷ The political dynamics of this time are documented by B. N. Mullick, the Deputy Director and later Director in Charge of Internal Affairs for India's Intelligence Bureau from September 1948 until the mid-1960s. Mullick's memoirs show how deeply the Indian intelligence bureau shaped regional political developments by instituting a pro-India government, actively aiding military intelligence on the frontier with army cover, and creating Indian-supported police and counter-intelligence posts along the porous border ahead of the army ceasefire line and "deep in the interiors" throughout J&K (1971, 35–48, 61). His memoirs also provide many accounts of the constant surveillance maintained on Kashmiri political leadership and the active and operational role played by the Indian intelligence establishment in precluding any departure from Indian policy, even by popular leaders. Mullick repeatedly mentions D.P. Dhar and Bakshi Ghulam Mohammad as sources of information during this period (1971, 14, 27, 31, 46, 58–59).

During this period of J&K's interim government, the Indian constituent assembly met from December 1946 to January 1950 to draft the new nation's constitution, including its controversial incorporation of preventive detention in the charter of fundamental rights. Given the war in Kashmir and the lack of United Nations resolution on the Kashmir dispute, representatives from Kashmir did not initially participate in the deliberations of the constituent assembly. In June 1949, just six months before the enactment of India's

constitution, a Kashmiri delegation of four members led by Sheikh Abdullah participated in the proceedings in order to voice the Kashmiri position on the *ad interim* constitutional relationship, pending a final settlement, under the assurance that it did not in any way undermine the sovereign will of the Kashmiri people. In keeping with the contingent nature of this arrangement, the Indian constituent assembly included Article 370 as a temporary provision to constitutionally incorporate the terms of the Instrument of Accession until the J&K constituent assembly could be formulated to establish a final political settlement for the region (Noorani 2011, 6–8; Tillin 2016, 546; Jagota 1960, 522–524).⁸

Article 370, which remains in place in the Indian constitution to this day, stipulates that the jurisdiction of Indian Parliament and the application of the Indian Constitution could be extended to J&K by presidential order, but not beyond the subjects outlined in the Instrument of Accession without the concurrence of the state government. This temporary provision was established pending ratification by the J&K constituent assembly. The article also gives the president the power to cease the operation of Article 370 or to amend it, but only on the recommendation of the J&K constituent assembly; ordinary processes of constitutional amendment do not apply. “Once Kashmir’s Constituent Assembly was ‘convened’ on 31 October 1951, the State government lost all authority to accord any ‘concurrence’ to the Union” (Noorani 2011, 7). As Noorani argues, once the J&K constituent assembly dispersed in 1956 after adopting the J&K constitution, there was no longer any authority to initiate amendment to Article 370 to alter the nature of federal arrangements for the state – meaning that “all additions to Union powers since then are unconstitutional” (Noorani 2011, 8).

In November 1949, the young regent of J&K, appointed after his father, the maharaja abdicated the throne in June, issued a proclamation that the Indian Constitution would govern the relationship between India and J&K. On the same day that the constitution came into effect in January 1950, the president executed the first presidential order applying the Indian Constitution to J&K under the terms stipulated in Article 370. While this Constitution (Application to J&K) Order 1950 ostensibly only dealt with subjects outlined in the Instrument of Accession and left all residuary powers with the state legislature, it actually extended India’s legislative jurisdiction in J&K to 37 out of 100 subjects listed in the constitution, including those relating to the union executive, finance, elections, and interstate relations, and it made many provisions of the Indian Constitution applicable to the state by treating them as related to defense, foreign affairs, or communications. Preventive detention in relation to defense, foreign affairs, and the security of India was specifically included as a subject on which the Indian parliament could legislate.

Sheikh Abdullah’s National Conference candidates won all of the seats in the controversial constituent assembly elections, with the major pro-Pakistan opposition party boycotting the election, and the constituent assembly began meeting in October 1951 to draft the J&K constitution, based in part on the party’s New Kashmir constitution of 1944 – a progressive manifesto advocating socialist land reforms and a democratic polity. Abdullah framed the mission of the J&K constituent assembly around the establishment of popular democracy, rule of law, and self-determination based on the full sovereign authority of all people of J&K. In his opening address to the J&K constituent assembly in November 1951, Abdullah announced that:

You are the sovereign authority in this State of Jammu and Kashmir, what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and French Constitution, is once again given shape in our midst. (Abdullah 1951, 98)

Despite his emphasis on principles of sovereignty and self-determination, he favored continuing the terms of the accession rather than holding a plebiscite. As Mullick notes, “the strongest opposition to plebiscite came from Sheikh Abdullah himself” (1971, 8). Sheikh Abdullah established his position on J&K’s constitutional relationship with India in his opening address:

With the exception of the items grouped under Defence, Foreign Affairs and Communication in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable constitutional arrangements with the Union establish our right to seek and compel Federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union. (Abdullah 1951, 99)

Throughout the speech, he reiterated the legality and constitutionality of the accession to India to bolster the legitimacy of the J&K constituent assembly. Abdullah’s strong advocacy of the constitutional assembly process as a means of achieving Kashmiri sovereignty while respecting the accession to India demonstrates the contradiction of advocating self-determination while opposing plebiscite.

Under Article 370, the J&K constituent assembly had the responsibility of determining the nature of the constitutional relationship between India and J&K moving forward.⁹ Differences between the Indian and Kashmiri positions on the sovereignty of Kashmir became apparent as the constitutional drafting process proceeded, particularly on the questions of the jurisdiction of the Indian Supreme Court and the application of fundamental rights (Jagota 1960, 526–529). Efforts of both governments to negotiate these key points led to the Delhi Agreement in 1952, which formally outlined the terms of the constitutional relationship on issues including residuary powers, presidential authority, emergency provisions, citizenship, fundamental rights, and Supreme Court jurisdiction. Despite Sheikh Abdullah’s public avowals of belief in rule of law and democratic popular sovereignty, the Kashmiri delegation involved in negotiating the Delhi Agreement shared a common interest with the Indian political establishment: the continuation of regimes of political containment through preventive detention in Kashmir. Indian Prime Minister Jawaharlal Nehru recorded the consensus of views between the Kashmiri delegation and the members of the Indian constituent assembly on the need to suspend the fundamental rights limitations on preventive detention:

In view of the peculiar situation in the State because of the invasion of the State by Pakistan, subsequent war and ceasefire, very special precautions had to be taken against people infiltrating for espionage, sabotage, or to create trouble otherwise. If, by the full application of the Fundamental Rights in the Constitution, these persons could not be dealt with swiftly and effectively, the situation may well deteriorate and go out of hand. Therefore, the State Government required special powers to deal with this situation and the Fundamental Rights should not take away these powers. This principle was agreed to. (Nehru 1952)

The “peculiar situation” of the border state was employed to justify the provision of “special powers” to the state government superseding the fundamental rights outlined in the constitution.

After the Delhi Agreement, Sheikh Abdullah, who had maintained a position in support of negotiated sovereignty to this point, began publicly voicing disillusionment with India’s constitutional promises of sovereignty, questioning possibilities for autonomy within the Indian constitution, and drifting towards a position in support of plebiscite. As negotiations over key issues faltered, Sheikh Abdullah was removed from office and detained under the Public Security Act in August 1953, while a more compliant Kashmiri administration was installed including Bakshi Ghulam Mohammad as Prime Minister and D.P. Dhar as Home Minister. Mullick documents this replacement of Sheikh Abdullah’s government by a pro-India faction as part of a covert intelligence action, praising Dhar as a valuable informant who engineered Sheikh’s “fall from the pedestal” and handled political unrest and protest afterwards (1971, 35–47). Under Bakshi’s regime, Abdullah was held under the J&K Public Security Act until January 1958, then detained again under the new PDA from April 1958 until April 1964; he was detained by the Indian government under the Defense of India Rules, emergency regulations initially promulgated during a period of border tensions with China in the early 1960s, from May 1965 to January 1968.

With J&K under new leadership, Indian jurisdiction over J&K was extended through several more presidential orders with the concurrence of the state government. As Noorani argues, “Article 370 was not ‘eroded’ by efflux of time or ravages of the elements. It was denuded of content by conscious executive acts on [Nehru’s] advice through one Presidential Order after another” (2011, 3). The Constitution (Application to J&K) Order 1954 extended many provisions of the Indian Constitution to the state, with the approval of the J&K constituent assembly then in session:

This order gave the Union government the right to legislate in the State on the majority of items on the Union List; gave the Supreme Court full jurisdiction in Jammu and Kashmir; put the State’s financial and fiscal relations with the Union government on a par with other States; and extended fundamental rights to Jammu and Kashmir with the caveat that they could be suspended in the interests of ‘security’ and without judicial review. (Tillin 2016, 546)

The J&K constitution, enacted on 26 January 1957, does not include a chapter of fundamental rights, and it allows the Supreme Court of India full jurisdiction over the state. This constitution thus consolidated the legal annexation of the former princely state, entrenching J&K’s status as an “integral part of India” with no power to alter its constitutional relationship with the union.

There are three significant points of departure between the fundamental rights enacted in the Indian Constitution and the fundamental rights extended to J&K by presidential order in 1954. First, whereas the Indian Constitution outlines reasonable restrictions on the universal freedoms of association, mobility, and expression under Article 19, the presidential order specifies that restrictions on these universal freedoms would be determined by the “appropriate legislature,” rather than applying a normative standard subject to judicial review – which means that any law validly passed by the state legislature that violates these freedoms guaranteed by the Indian Constitution would be considered constitutional. The presidential order specified that this would be the case for 5, later extended to

25, years. Second, the presidential order stipulates that preventive detention laws can only be passed by the J&K state legislature and not by the Indian parliament as in other states. And third, the presidential order inserts Article 35(C) into the Indian Constitution to protect preventive detention laws in J&K from judicial review for five years. Subsequent presidential orders extended this moratorium on judicial review from 5 to 10, 15, and 20 years through subsequent presidential orders in 1959, 1964, and 1969, respectively. Prior to the passage of the J&K PSA 1978, all preventive detention legislations in the state were immune from judicial review under this constitutional moratorium.

These special legal conditions were justified through the association of J&K with danger, threat, and instability. Throughout the period of the J&K interim government and constituent assembly, the Intelligence Bureau played an instrumental role in establishing and entrenching the narrative attributing all political dissent to externalized causes instigated by infiltrators and agents from Pakistan, rather than Kashmiri state subjects whose pre-existing political and kinship allegiances now crossed the porous border produced through the war (Robinson 2013). The emerging constitutional relationship between India and J&K conferred Indian citizenship rights only on pro-Indian Kashmiri political subjects, forcing incarceration of political dissidents and expulsion of political refugees to their original homes. These frequent boundary crossings, the legacies of long-existing transportation and kinship ties that flowed along trading routes, were seen as inherently suspicious, and the indistinguishability between local communities and enemy agents transformed every Kashmiri into either an infiltrator or a Pakistani sympathizer harboring and encouraging anti-Indian sentiments and activities.

Promulgated as a wartime measure by declaration of the maharaja in 1948, the Enemy Agents Ordinance created new offences of aiding the enemy provided the J&K state with far-ranging powers to deliver punishments ranging from imprisonment of 10 years to death and to institute trial by a designated special court with no right of appeal for persons designated as enemy agents or as persons aiding the enemy. The J&K interim government amended and consolidated the ordinance in January 1949 citing the continuing conditions of a war-like emergency, even though the war with Pakistan had officially ended in a ceasefire. In *Rehman Shagoo and Others vs. State of Jammu and Kashmir* 1960 (SCR (1) 680), a constitutional bench of the Supreme Court upheld the constitutionality of this law, despite the change in conditions, since “the Ordinance was a law relating to public order, criminal law and procedure and not defence” (Singh 2007, 232). Remaining on the statute books to this day, the state government uses the Enemy Agents Ordinance to target pro-freedom political activists in J&K, citing disturbances and violations along the LoC as well as geopolitical instabilities in Pakistan and Afghanistan (for example, see Maqbool 2014). Across 6 decades, this ordinance has provided the legal basis for the imprisonment of hundreds of political dissidents and displaced persons by permanently inscribing the emergency of the wartime administrative exigencies into the legal regime.

The principles and practices of generalized suspicion and collective punishment shaped the nature of borders, identities, and rights in the early years of J&K’s coercive constitutional integration into India. Amidst perceived political dissent, rigged elections, and border wars, preventive detention was used extensively across three decades as a tool of political containment, both by India against Kashmiri nationalist leaders and by successive authoritarian J&K political establishments against dissenters. In the next section, we trace how this sense of permanent political danger became sedimented over time through law.

Institutionalizing the jurisdiction of suspicion

In this section, we examine cases before the Supreme Court of India and the High Court of Jammu and Kashmir involving legal challenges to specific preventive detention orders to show how the courts' interpretations of J&K's constitutional assembly process and constitutional status have underwritten the regime of permanent emergency. We argue that preventive detention cases have been crucial mechanisms for the judicial emptying out of J&K's constitutional sovereignty and the constitutional annexation of J&K into the Indian jurisdiction. In preventive detention cases, the courts have overwhelmingly validated executive and legislative infringements of fundamental rights and rule of law in J&K and judicially endorsed the subordination of J&K to the Indian jurisdiction, undermining the guarantee of legislative sovereignty under Article 370. This section considers the legal genealogies that have enabled and entrenched the "lawlessness" of the J&K Public Safety Act 1978.

As discussed in the previous section, prior to the PSA, petitioners had no avenues to challenge the lawfulness of preventive detention in J&K, as the presidential order in 1954 inserted Article 35(C) in the Indian Constitution barring judicial review of preventive detention laws. It effectively protected early preventive detention laws from constitutional challenge on the grounds that they violated constitutionally guaranteed rights. Several examples from the early judicial archive of the J&K High Court and the Supreme Court on preventive detention in J&K highlight the court's refusal to venture into legislative questions of violations to rights to life and liberty, given the existence of Article 35(C) – leading to a virtual suspension of the *habeas corpus* right to challenge arbitrary and unlawful detentions.

The first case dealing with the presidential order of 1954 to come up for hearing before the J&K High Court was *Ghulam Ahmad Ashai vs. State* 1954 (CriLJ 1811 (J&K)). The petitioner, an activist aligned with Sheikh Abdullah, had been held in revolving door detentions under four consecutively passed preventive detention orders initially authorized under the Public Security Act 1946 and then replaced while he was still in custody by the PDA 1954. He argued that Section 19 of the PDA 1954 was invalid as retrospective legislation since it validated orders passed under previous preventive detention law. The High Court stated that though Article 20 of the Indian Constitution forbids the trial and conviction of a person according to a law which was not in force at the time when the offence was committed, preventive detention proceedings are not judicial proceedings and preventive detention is not a conviction or sentence of imprisonment, and hence would not be impacted by the bar on retrospective criminality. Thus the court held that the "spirit of the Constitution" was not a valid ground to challenge preventive detention legislation.

The leading precedent on Article 35(C) is the Supreme Court case of *P.L. Lakhanpal v State of J&K* 1955 (SCR (2)1101). The petitioner, a prominent newspaper editor, political activist, and vocal opponent of Sheikh Abdullah's preventive detention who was himself detained under the PDA 1954, challenged the constitutionality of the act on the grounds that the non-supply of grounds of detention to the detainee constituted a violation of fundamental rights. A constitutional bench of the court held that Article 35(C) barred the application of the chapter of fundamental rights to the state for the period of the moratorium.¹⁰

Besides constitutional challenges to the provisions of each new iteration of preventive detention laws, the moratorium and the repeated extensions of the bar on constitutional challenges under Article 35(C) were themselves challenged as violations of fundamental rights, highlighting the intertwined relationship between preventive detention legislation and Kashmir's constitutional sovereignty. The most prominent Supreme Court case dealing with the scope of Article 370 and the powers of the president was *Sampat Prakash vs. State of J&K and Another* 1970 (SCR (2) 365). The petitioner, a trade unionist detained and held in solitary confinement under the PDA 1964 during a period of intense political unrest and general strike in the late 1960s, challenged the constitutional validity of the presidential orders in 1959 and 1964 that had repeatedly amended Article 35(C) by extending the moratorium on judicial reviews. The petitioner argued that parts of Article 370 could be struck down for violating fundamental rights since the entire article came under the definition of "law" in the Indian constitution, and that all amendments made to Article 370 had lacked validity once the J&K constituent assembly, as the body empowered to amend or suspend Article 370, had been dissolved. The court held that the president had the power to extend the period of immunity of state laws even if fundamental rights were being infringed, and that the presidential order of 1954 and its modifications in 1959 and 1964 were validly passed in accordance with the procedure established in Article 370. In its decision, the court departed sharply from previous precedent of *Prem Nath Kaul vs. State of J&K* 1959 (SCR Supl. (2) 270), which recognized the "temporary and transitory" nature of Article 370 and held that the J&K constituent assembly had the power to suspend or amend Article 370. *Sampat Prakash* became the leading precedent on the question of Article 370, transforming it from a temporary provision into a permanent mechanism for continuously extending Indian legislative jurisdiction over the state through presidential orders far beyond the limitations established in the initial Instrument of Accession. The court did, however, decide that since the petitioner was not accused of any criminality, he could not be held in solitary confinement.

The gradual takeover of J&K's autonomous institutions and constitutional sovereignty was challenged in another case involving preventive detention in the following year. *Mohammad Maqbool Damnoo vs. State of Jammu and Kashmir* 1972 (SCR (2) 1014) questioned the constitutional validity of the Preventive Detention Amendment Act 1967 on the basis that it had received the assent of the governor rather than the *sadar-i-riyasat*, the constitutional head of the state – a position elected by the state legislature and established by the J&K constituent assembly to replace the maharaja in accordance with the Delhi Agreement in 1952. The J&K constitution was amended through the Constitution of Jammu and Kashmir (6th Amendment) Act 1965 to provide for the appointment of a governor, nominated by the central government, in place of the *sadar-i-riyasat*. The petitioner, besides challenging the validity of his detention order on procedural grounds, contended that the changes to Article 370 brought about by the amendment violated the J&K constitution, and hence the preventive detention law could not be valid unless it received the assent of the *sadar-i-riyasat*. The court, however, endorsed the validity of the amendment, affirmed the J&K constitution's subordinated status, and held that the phrase "Government of Jammu and Kashmir" under Article 370 referred to the Governor and Council of Ministers, rather than the *sadar-i-riyasat*.

One of the few successful constitutional challenges of a provision of a preventive detention law occurred in the late 1980s after the lapse of the constitutional moratorium on

judicial review. In *Peer Hissam-Ud-Din vs. State* 1988 (CriLJ 1500 (J&K)), the petitioner was described as a “notorious and staunch worker of Muslim United Front (MUF)” – the MUF, an ad-hoc coalition of pro-freedom organizations that stood for state legislative elections in 1987.¹¹ The detention order outlined a long list of detention grounds for actions associated with the political violence of 1987 electoral campaign, including organizing meetings, inciting strikes, delivering speeches urging freedom from India, and commemorating in protest the state execution of a prominent Kashmiri freedom fighter. The petitioner alleged that the detention order had not been served, the relevant documents had not been supplied, and the detention grounds were vague. He also challenged the constitutionality of PSA Section 10-A, a controversial amendment stating that a detention order made on multiple grounds would not be invalidated if one or more grounds were found to be vague, non-existent, not relevant, or not connected to the detainee. Observing that the legislature had enacted this amendment to overcome the frequent setting aside of illegal detention orders, the J&K High Court agreed that Section 10-A contravened the provisions of Articles 19, 21, and 22 of the Indian constitution as made applicable to J&K:

Section 10-A of the Jammu & Kashmir Public Safety Act takes away all such rights which arise out and flow from the constitutional guarantees depriving this Court of its powers of judicial review regarding the executive action taking away the personal liberty of a citizen. Section 10-A of the Act in effect and in essence amounts to negation of the powers of the judicial review of this Court.

The court invalidated Section 10-A and declared the detention order unconstitutional in this case, but it upheld the validity of preventive detention in general, finding that the amendment’s invalidity did not render the whole PSA unconstitutional.

The workings of the judiciary through the decades of constitutional consolidation of Indian jurisdiction over J&K from the 1950s to the late 1980s, before the onset of the armed rebellion, established precedent that solidified the coercive constitutional relationship established through the negotiations associated with the parallel drafting processes of the 1950s. The case law involving various kinds of political dissenters, ranging from supporters of Sheikh Abdullah to trade unionists and pro-freedom electoral candidates, highlights the continuous use of techniques of political containment through generalized frameworks of permanent crisis and jurisdictions of suspicion, all deeply entrenched in postcolonial constitutionalism and rule of law.

Conclusion

Preventive detention lies at the heart of contemporary concerns about the relationships among liberal democracy, states of emergency, and authoritarianism. As Ludsin argues, liberal democracies have applied rule of law and due process rights as limits to protect against the rise of authoritarianism and abuses of executive power, allowing preventive detention to be applied only in extraordinary circumstances such as states of exception, when governments may temporarily suspend ordinary law and introduce extraordinary rules that would otherwise be illegal or unconstitutional in order to respond to an emergency threat to the state (Ludsin 2016, 11–12). Ludsin analyzes India as a key case of the incorporation of preventive detention into peacetime law enforcement mechanisms in a

variety of contexts including security, economic goods, and drugs – an increasingly common feature of other democracies in the context of the wars on terror and the emergence of the security state. “The expansion of preventive detention to new ‘exceptional’ circumstances places many liberal democratic societies onto a slippery slope that leads to detention as an ordinary law enforcement tool and to an alternative, inferior legal system for detainees not identified as deviant others” (Ludsin 2016, 12).

As we have demonstrated in this article, preventive detention has operated throughout Kashmir’s modern history as a key component of political containment, coercive governance, and authoritarian rule in the region. Our analysis of the pervasive logic of preventive detention challenges the Indian statist framing of the Kashmir dispute as an internal problem whose solution lies within the Indian constitutional framework. This law and order approach suggests that the solution to gross and persistent human rights violations by the Indian state lies in reforms and repeals of unconstitutional laws and better enforcement of constitutional safeguards against abuses of power. It is founded on the legitimizing scaffolding of rule of law, democratic governance, and judicial independence – the same scaffolding, we argue, that spatializes and institutionalizes the occupation through coercive constitutional and judicial orders.

In her recent work on preventive detention and emergency laws in postcolonial Sri Lanka, Vasuki Nesiah (2010) critiques liberal understanding of exceptional laws by exploring the specific ways in which preventive detention legislations operate as constitutive and permanent features of violent political regimes of containment and exclusion, rather than representing them as tensions, contradictions or the extraconstitutional, unconstitutional or exceptional suspension of rule of law in constitutional democracies. In a legal milieu of heightened threat and risk perception, such as armed conflict or an active political resistance, this sense of political emergency is pervasive and socialized, and “the subjectivity of ‘protest’ becomes coded and prefigured as deviant through the discursive and performative violence of emergency regulations” (2010, 136). “Power,” she writes, “is authorised through the very delineation of constitutional limits” (2010, 122).

In this article, we have argued that an examination of rights, liberties, power, and sovereign jurisdiction through the lens of preventive detention allows us to see how India’s effective rule in Kashmir has been constituted and enabled through histories of legal and judicial acts, border-making, and political containment that are deeply imbricated in the constitutional institutions, reasoning, and texts of the postcolonial Indian state. Articles 21 and 22 of the Indian Constitution, and their extension to J&K through presidential orders, form the grounds of what Nesiah (2010, 124) has called “crisis constitutionalism”: “a state where counter-hegemonic dissent provoke[s] a sense of emergency.” In Kashmir, preventive detention, legitimized through permanent emergency and spatialized through jurisdictional assertion, is not an extraconstitutional, unconstitutional, or exceptional suspension of rights; rather, preventive detention and the consolidation and legalization of authoritarian territorial and jurisdictional claims are written into the logic of occupational constitutionalism in postcolonial India.

Notes

1. For more on Kashmir uprising and the state’s response in 2016, see Amnesty International (2016), JKCCS (2016), Peer (2016), and Waheed (2016).

2. Some of these recent cultural representations include Naseer Ahmed's graphic novel *Kashmir Pending* (2007); Shahnaz Bashir's novel *The Half Mother* (2014); Sanjay Kak's documentary film *Jashn-e-Azadi* (2007); MC Kash's debut rap album *Rebel RepubliK* (2011); Basharat Peer's memoir *Curfewed Night* (2010); Malik Sajad's graphic novel *Munnu* (2015); and Mirza Waheed's novels *The Collaborator* (2012) and *The Book of Gold Leaves* (2014), as well as the essays contained in two edited volumes of Kashmiri writings, Sanjay Kak's *Until My Freedom Has Come* (2013); and Fahad Shah's *Of Occupation and Resistance* (2013).
3. See especially Security Council Resolution 47 of April 21, 1948 recommending measures to end the war between India and Pakistan and establish conditions for a "free and impartial plebiscite to decide whether the State of Jammu & Kashmir is to accede to India or Pakistan." Subsequent resolutions set up the mechanism for plebiscite under the UN Commission for India and Pakistan, demilitarization of the region, and the establishment of a ceasefire line and UN military monitoring mechanism to end hostilities. Korbelt (2015 [1954], 97–117) discusses the complex factors framing the Kashmir dispute in the decade following Indian independence, including India's 1948 war with Pakistan, the UN resolutions on Kashmir, and the UN Commission's efforts to arrive at mutually agreeable terms for a plebiscite. See also Lamb (1991, 158–181).
4. Preventive detention laws have been repeatedly constitutionally challenged and upheld in different contexts, in the decades following independence (see *A.K. Gopalan vs. Madras* 1950 (SCR 88); *A.K. Roy, Etc. vs. Union of India and Another* 1982 (SCR (2) 272)) as well as during the Emergency-era suspension of *habeas corpus* in the 1970s (see *ADM, Jabalpur vs. S.S. Shukla, Etc.* 1976 (SCR 172); *Bhuti Nath Mete vs. State of West Bengal* 1974 (SCR(3) 315)).
5. While particular illegal preventive detention orders have often been invalidated for not conforming to constitutional requirements of legality or procedure, Indian courts have overwhelmingly validated the constitutionality of preventive detention laws in general on the grounds of necessity and security of state (see *A.K. Gopalan vs. State of Madras* 1950 (SCR 88); *Haradhan Saha vs. State of West Bengal and Others* 1974 (SCR (1) 778); *A.K. Roy vs. Union of India and Another* 1982 (SCR (2) 272)) and as an "an evil to be suffered" (*A.K. Roy vs. Union of India and Another* 1982, SCR (2) 272), even as the courts have recognized their incompatibility with a rule of law regime and the protections of liberty (*Ram Krishna Bhardwaj vs. The State of Delhi and Others* 1953, SCR 708) and have stressed the need for strict and narrow constructions of the law (*Dr. Ram Manohar Lohia vs. State of Bihar and Others* 1966 (SCR (1) 709)).
6. This was upheld in the Supreme Court case *Prem Nath Kaul vs. State of J&K* 1959 (SCR Supl (2) 270), which stated, "We must, therefore, reject the argument that the execution of the Instrument of Accession affected in any manner the legislative, executive and judicial powers in regard to the government of the State which then vested in the Ruler of the State." The decision was followed in *Rehman Shagoo and Others vs. State of J&K* 1960 (SCR (1) 680).
7. Idrees Kanth (n.d.) in his unpublished dissertation provides many instances of the widespread indigenous pro-Pakistan and anti-India sentiments in J&K, as well as the everyday tactics of the surveillance state, drawn from secret police CID files.
8. The interim nature of the arrangement was made clear by N. Gopalaswami Ayyangar, a leading member of the constituent assembly who had acted as Prime Minister of J&K during the Dogra period (1937–1943) and who took the lead in drafting Article 370. See, for example, Ayyangar's speech to the constituent assembly, quoted in Tillin 2006, 53. The Supreme Court reviewed Ayyangar's stated reasons for including Article 370 in the Indian constitution in *Sampat Prakash vs. State of J&K and Another* 1970 (SCR (2) 365).
9. India's interests in the J&K constitutional drafting process were exemplified by their submission to the United Nations that the process would substitute for a free and impartial plebiscite of the people of the state – a submission that the United Nations rejected in March 1951.
10. See also the J&K High Court cases *Kundan Lal vs. District Magistrate and Another* 1970 (CriLJ 1365 (J&K)) and *Sohan Singh vs. State* 1972 (CriLJ 692 (J&K)); as well as the Supreme Court case *Sampat Prakash vs. State of J&K and Another* 1970 (SCR (2) 365).
11. The blatant rigging of the 1987 elections is considered a major factor leading to the outbreak of the armed freedom struggle. See, for example, Sumantra Bose (2003, 48–51).

Acknowledgment

We wish to thank Khurram Parvez, Parvez Imroz, A.G. Noorani, and Idrees Kanth for their contributions to the research and writing of this article. We also wish to thank Ashiq Hussian Bhat as well as two anonymous reviewers for their meticulous and thoughtful readings of the article. Their comments and suggestions have remarkably improved the analysis. A version of this paper was presented at the Annual Meeting of the Law and Society Association in Mexico City on June 22, 2017. We thank the participants for their helpful comments.

Disclosure statement

No potential conflict of interest was reported by the authors.

References

- Abdullah, Sheikh. 1948, February 5. "Speech to the United Nations Security Council." Meeting No. 241.
- Abdullah, Sheikh. 1951, November 5. "Speech to the J & K Constituent Assembly." In *Article 370: A Constitutional History of Jammu and Kashmir*, edited by A.G. Noorani, 96–108. New Delhi: Oxford University Press.
- Ahmed, Naseer. 2007. *Kashmir Pending*. Delhi: Phantomville Publishing House.
- Akhtar, Shaheen. 2000. "Elections in Indian-Held Kashmir." *Regional Studies* 18(3): 38–39.
- Amnesty International. 2011, March 21. *India: A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act*. ASA 20/001/2011. London: Amnesty International.
- Amnesty International. 2016, September 16. *India: Kashmiri Human Rights Activist Held in Administrative Detention*. Urgent Appeal. Delhi: Amnesty International.
- Austin, Granville. 1966. *The Indian Constitution: Cornerstone of a Nation*. Oxford: Clarendon Press.
- Bashir, Shahnaz. 2014. *The Half Mother*. Gurgaon: Hachette Books.
- Batool, Essar, Ifrah Butt, Samreena Mushtaq, and Natasha Rather. 2015. *Do You Remember Kunan Poshpora? The Story of a Mass Rape*. Chicago, IL: University of Chicago Press.
- Baxi, Upendra. 1982. *The Crisis of the Indian Legal System*. New Delhi: Vikas.
- Benvenisti, Eyal. 2013. *The International Law of Occupation*. Oxford: Oxford University Press.
- Benvenisti, Eyal. 2016. "Occupation and Territorial Administration." In *The Routledge Handbook of the Law of Armed Conflict*, edited by Rain Liivoja and Tim McCormack, 435–454. London and New York: Routledge.
- Bhan, Mona. 2014. *Counterinsurgency, Democracy, and the Politics of Identity in India: From Warfare to Welfare ?* London: Routledge.
- Bhan, Mona, Haley Duschinski, and Ather Zia. *Forthcoming*. "Rebels of the Streets': Violence, Protest, and Resistance in Kashmir." In *"They Gave Us Blood": Critical Ethnographies of Occupation and Resistance in Kashmir*, edited by Haley Duschinski, Mona Bhan, Ather Zia, and Cynthia Mahmood. Philadelphia, PA: University of Pennsylvania Press.
- Bose, Sumantra. 2003. *Kashmir: Roots of Conflict, Paths to Peace*. Cambridge: Harvard University Press.
- Bose, Sumantra. 2007. *Contested Lands*. Cambridge: Harvard University Press.
- Duschinski, Haley. 2009. "Destiny Effects: Militarization, State Power, and Punitive Containment in Kashmir Valley." *Anthropological Quarterly* 82(3): 691–717.
- Duschinski, Haley and Bruce Hoffman. 2011. "On the Frontlines of the Law: Legal Advocacy and Political Protest by Lawyers in Contested Kashmir." *Anthropology Today* 27(5): 8–12.
- Duschinski, Haley, Mona Bhan, Ather Zia, and Cynthia Mahmood, eds. *Forthcoming*. *"They Gave Us Blood": Critical Ethnographies of Occupation and Resistance in Kashmir*. Philadelphia: University of Pennsylvania Press.

- Ghosh, Shrimoyee N. 2014. "The Kunan Poshpora Mass Rape Case: Notes from a Hearing." *Warscapes*, September 9. Accessed 3 May 2017. <http://www.warscapes.com/reportage/kunan-poshpora-mass-rape-case-notes-hearing>.
- Ghosh, Shrimoyee Nandini. 2016. "Kashmir: Let's Call a War by its Rightful Name." *The Wire*, August 13. Accessed 27 April 2017. <http://thewire.in/58447/kashmir-lets-call-war-rightful-name/>.
- Hajjar, Lisa. 2005. *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*. Berkeley: University of California Press.
- Hussain, Nasser. 2003. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor: University of Michigan Press.
- International Committee of the Red Cross. 2012, June 11. *Occupation and Other Forms of Administration of Foreign Territory*. Expert Meeting Report.
- IPTK and APDP (International People's Tribunal for Human Rights and Justice in Indian Administered Kashmir and Association of Parents of Disappeared People). 2015, September. *Structures of Violence: The Indian State in Jammu and Kashmir*. Srinagar: IPTK and APDP.
- Jagota, S.P. 1960. "Development of Constitutional Relations between Jammu and Kashmir and India, 1950–1960." *Journal of the Indian Law Institute* 2(4): 519–538.
- JKCCS (Jammu and Kashmir Coalition of Civil Society). 2016. *State Versus Khurram Parvez: A People's Dossier*. Srinagar: JKCCS.
- JKCCS (Jammu and Kashmir Coalition of Civil Society). 2017. *Human Rights Review 2016*. Srinagar: JKCCS.
- Jinks, Derek. 2001. "Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India." *Michigan Journal of International Law* 22: 311–360.
- Junaid, Mohamad. 2013. "Death and Life Under Military Occupation: Space, Violence, and Memory in Kashmir." In *Everyday Occupations: Experiencing Militarism in South Asia and the Middle East*, edited by Kamala Visweswaran, 158–190. Philadelphia: University of Pennsylvania Press.
- Kak, Sanjay. 2007. *Jashn-e-Azadi (How We Celebrate Freedom)*. New York: Indiepix.
- Kak, Sanjay, ed. 2013. *Until My Freedom Has Come: The New Intifada in Kashmir*. Chicago, IL: Haymarket Books.
- Kanth, Idrees. n.d. *National Consciousness and Public Discourse in Twentieth Century Kashmir*. Unpublished Ph.D. diss, Asian Modernities and Traditions, Leiden University.
- Kaul, Suvir. 2011. "Indian Empire (and the Case of Kashmir)." *Economic & Political Weekly* 46(13).
- Khosla, Madhav. 2002. *The Indian Constitution*. Oxford: Oxford University Press.
- Korbel, Josef. 2015 [1954]. *Danger in Kashmir*. Princeton, NJ: Princeton University Press.
- Lamb, Alistair. 1991. *Kashmir: A Disputed Legacy 1846–1990*. Hertfordshire: Roxford Books.
- Ludsin, Hallie. 2016. *Preventive Detention and the Democratic State*. Cambridge: Cambridge University Press.
- Mate, Manoj. 2010. "The Origins of Due Process in India: The Role of Borrowing in Personal Liberty and Preventive Detention Cases." *Berkeley Journal of International Law* 28(1): 216–260.
- Mathur, Shubh. 2012. "This Garden Uprooted: Gendered Violence, Suffering and Resistance in Indian-Administered Kashmir." In *Gender, Power, and Military Occupations: Asia Pacific and the Middle East Since 1945*, edited by Christine de Matos and Rowena Ward, 217–238. London: Routledge.
- Mathur, Shubh. 2016. *The Human Toll of the Kashmir Conflict: Grief and Courage in a South Asian Borderland*. New York: Palgrave Macmillan.
- Maqbool, Umer. 2014. "Govt Justifies Continuation of Enemy Agents Ordinance." *Greater Kashmir*, March 2. Accessed 2 May 2017. <http://www.greaterkashmir.com/news/news/govt-justifies-continuation-of-enemy-agents-ordinance/165017.html>
- MC Kash. 2011. *Rebel Republik*. Srinagar: MC Kash.
- Mullick, B. N. 1971. *My Years with Nehru*. Bombay: Allied Publishers Private Limited.
- Nehru, Jawaharlal. 1952, July 20. "Nehru's Note Recording Discussions with Kashmir's Delegation." In *Article 370: A Constitutional History of Jammu and Kashmir*, edited by A.G. Noorani, 133–138. New Delhi: Oxford University Press.

- Nesiah, Vasuki. 2010. "The Princely Imposter: Stories of Law and Pathology in the Exercise of Emergency Powers." In *Emergency Powers in Asia: Exploring the Limits of Legality*, edited by Victor V. Ramraj and Arun K. Thiruvengadam, 121–145. Cambridge: Cambridge University Press.
- Noorani, A. G. 2011. *Article 370: A Constitutional History of Jammu and Kashmir*. New Delhi: Oxford University Press.
- Noorani, A. G. 2012. *Challenges to Civil Rights Guarantees in India*. Oxford: Oxford University Press.
- Peer, Basharat. 2010. *Curfewed Night: A Frontline Memoir of Life, Love and War in Kashmir*. New York: Random House.
- Peer, Basharat. 2016. "Kashmir, and the Inheritance of Loss." *New York Times*. July 25. http://www.tandf.co.uk/journals/authors/style/reference/tf_ChicagoAD.pdf
- Rai, Mridu. 2004. *Hindu Rulers, Muslim Subjects: Islam, Rights, and the History of Kashmir*. Princeton, NJ: Princeton University Press.
- Robinson, Cabeiri deBergh. 2013. *Body of Victim, Body of Warrior: Refugee Families and the Making of Kashmiri Jihadists*. Berkeley: University of California Press.
- Sajad, Malik. 2015. *Munnu*. London: Fourth Estate.
- Samaddar, Ranabir. 2006. "Law and Terror in the Age of Colonial Constitution Making." *Diogenes* 53: 18–33.
- Shah, Fahad, ed. 2013. *Of Occupation and Resistance: Writing from Kashmir*. Mumbai: Westland and Tranquebar Press.
- Singh, Ujjwal Kumar. 2007. *The State, Democracy and Anti-terror Laws in India*. Delhi: Sage Publications.
- Singh, Ujjwal Kumar. 2009. "Penal Strategies and Political Resistance in Colonial and Independent India." In *Challenging the Rules(s) of Law: Colonialism, Criminology and Human Rights in India*, edited by Kalpana Kannabiran and Ranbir Singh, 227–255. New Delhi: Sage Publications.
- Snedden, Christopher. 2013. *Kashmir: The Unwritten History*. New Delhi: Harper Collins.
- Staniland, Paul. 2013. "Kashmir since 2003: Counterinsurgency and the Paradox of 'Normalcy.'" *Asian Survey* 53(5): 931–957.
- Tillin, Louise. 2006. "United in Diversity? Asymmetry in Indian Federalism." *Publius: The Journal of Federalism* 37(1): 45–67.
- Tillin, Louise. 2016. "Asymmetric Federalism." In *The Oxford Handbook of the Indian Constitution*, edited by Sujit Choudhary, Madhav Khosla, and Pratap B. Mehta, 45–67. Oxford: Oxford University Press.
- United Nations Security Council Resolution 47 of April 21. 1948. Included in *Legal Aspects of the Kashmir Problem* by H. S. Gururaja Rao 2002 (1967), 389–392. New Delhi: Minerva Press.
- Varma, Saiba. 2012. "Where There Are Only Doctors: Counselors as Psychiatrists in Indian-Administered Kashmir." *Ethos* 40(4): 517–535.
- Varma, Saiba. 2016. "Love in the Time of Occupation: Reveries, Longing, and Intoxication in Kashmir." *American Ethnologist* 43(1): 50–62.
- Waheed, Mirza. 2012. *The Collaborator*. London: Penguin.
- Waheed, Mirza. 2014. *The Book of Gold Leaves*. London: Penguin.
- Waheed, Mirza. 2016. "India Is Blinding Young Kashmiri Protesters – And No One Will Face Justice." *The Guardian*, July 18. http://www.tandf.co.uk/journals/authors/style/reference/tf_ChicagoAD.pdf
- Zia, Ather. 2016. "The Spectacle of a Good Half-Widow: Women in Search of their Disappeared Men in the Kashmir Valley." *Political and Legal Anthropology Review* 39(2): 164–175.
- Zutshi, Chitralekha. 2004. *Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir*. New York: Oxford University Press.